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Policy on Use-of-Force

2 messages

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Tue, Jan 24, 2017 at 1:32 PM

This policy was reviewed March, 2016 and holds training during the Biennium In- service training for firearms and a refresher before annual firearms qualifications.

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Montoya, Darlene <dmontoya@nmag.gov>
To: Russell Shafer <Russell.Shafer@quaycounty-nm.gov>

Tue, Jan 24, 2017 at 1:59 PM

Thank you so much Chief Shafer. I will print these out for the Subcommittee's review. Have a wonderful rest of the day and stay safe.

[Quoted text hidden]

—

Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501

QUAY COUNTY SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Use of Force	NUMBER: 2-6
EFFECTIVE DATE:	REVIEW DATE:
AMENDS/SUPERSEDES:	APPROVED: Sheriff
	NMSA

INDEX WORDS

Choke holds	Force cont.
Firearms	Vehicles (firing at/from)
Qualification	Oleoresin capsicum (OC)
Force	Pepper spray
Deadly	PR-24/Baton
Excessive	Shotguns
Non-deadly	Tear gas
Prohibited acts	Electronic Control Device
(ECDs/ECWs)	Reporting use of Weapons
Use of (general)	Off-duty
	On-duty

I. POLICY

Deputies are confronted daily with situations requiring the use of force to affect an arrest or ensure public safety. The degree of force used depends on what the deputy perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. Except for deadly force, the application of any degree of force is justified only when the deputy reasonably believes that it is necessary

- A. to prevent the escape from custody, make an arrest or an investigative detention of a person the deputy believes has committed a crime; or
- B. to defend him or herself or another from what the deputy believes is the use of force while trying to arrest another, prevent his or her escape, or otherwise lawfully take the person into custody.

Facts or circumstances unknown to the deputy shall not be considered in later determining whether the force was justified. The department expects deputies to observe the following two guidelines in all applications of force:

1. Employ the minimum force reasonably necessary to accomplish a legal purpose.
2. Deputies may resort to more serious methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.

The escalation in the use of force typically follows a pattern: verbal control, compliance techniques (control holds), chemical weapons, defensive tactics (e.g., baton), and finally deadly force. Deputies must understand how to recognize increasing or decreasing levels of threat and respond appropriately.

When applying deadly force, deputies' objective shall be to stop or incapacitate the suspect, not to kill, unless no other choice presents itself. The objective of the use of any force is to overcome the suspect's resistance to a deputy's lawful purpose: deputies shall avoid unnecessary or excessive applications of force.

Deputies shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

II. PURPOSE

This policy establish guidelines governing the use of force and its limitations, and to describe prohibited activities.

III. DEFINITIONS

A. Deadly force:

1. The firing of a firearm, even though no intent exists to kill or inflict bodily harm.
2. Any force applied in any manner by any means that could reasonably be expected to cause death or great bodily harm.
 - a. "Great bodily harm" means bodily injury which creates a substantial risk of death or which likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

B. Non-deadly force:

Force employed which is not likely to or intended to cause death or serious physical injury.

C. Firearms:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. Reasonable Belief:

When facts or circumstances the deputy knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. Serious physical injury:

A physical injury, which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

F. Excessive force:

Force is excessive when its application is inappropriate to the circumstances. Excessive force may result in serious physical injury or death to a suspect. In determining whether force has been excessively applied, the primary concern is whether the on-scene deputy reasonably believes that its application was necessary and appropriate. Based on the reasonableness standard, excessive force may be determined based on:

1. the severity of the crime;
2. the nature and extent of the threat posed by the suspect;
3. the degree to which the suspect resists arrest or detention; and
4. any attempts by the suspect to evade arrest by flight.

In evaluating the reasonable application of force, deputies must consider their own age, size, strength, skill level with department weapons, state of health, and the number of deputies opposing the number of suspects.

IV. PROCEDURES - Non-deadly force

The department trains deputies in the use-of-force continuum

which emphasizes the recognition of and response to increasing levels of threat. Most instances in which force is applied are non-deadly. Deputies shall assess the incident to determine which technique will best bring the situation under control. Following the application of any method of force, once the situation is contained, deputies shall provide or arrange to provide medical help. The following discussion reinforces key principles from training.

A. Verbal control:

Verbal control refers to the manner in which the deputy

speaks to a person, which alone can manage a situation.

Verbal control includes advice, persuasion, admonitions,

or orders. The volume and tone of the deputy's speech may also contribute to control without having to resort

to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

B. Compliance techniques:

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, control holds or take-downs with sufficient force to make the lawful arrest without aggravating a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to deputies, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, deputies may employ hands, fists, feet, knees, and so on in striking an adversary, according to methods sanctioned through training.

C. Chemical agents:

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser

levels are inappropriate or ineffective. The only chemical weapon authorized for sworn personnel is the oleoresin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect within training standards. Specialized chemical agents such as concussion grenades or tear gas shall be used only by personnel trained in their application, and then only under direct orders of the on-scene supervisor upon consultation with the sheriff.

1. Chemical sprays shall not be used to threaten, elicit information or persuade people to comply with orders, nor will they be used on people who are handcuffed, secured, and properly in custody.
2. Keep the application to the absolute minimum required to effectively control the subject.
3. Do not use on persons who are sick, intoxicated or who are not in possession of their normal protective reflexes (such as being able to turn away from the applied spray). NOTE: Applying a chemical agent to such persons can result in injury out of proportion to the threat they may present.
4. If the use of tear gas is authorized by the on-scene supervisor, observe the following:
 - a. These chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
 - b. Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
 - c. Tear gas gun is used to fire projectiles into the area of an armed, barricaded suspect when the use of hand-tossed grenades is unsafe or impractical.

D. DEFENSIVE TACTICS:

The department authorizes the carrying and use of the (baton,pr-24,asp) as the only striking weapon for deputies: all other forms of striking or punching weapons are prohibited for carrying or use, including but not limited to saps, blackjacks, slapjacks, nunchaku and similar sticks, and brass knuckles. Deputies who carry the (baton) shall be certified in its use. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or not appropriate and lesser levels are ineffective.

1. The (baton) shall not be used to strike handcuffed individuals or to threaten or intimidate people.
2. The (baton) is mainly useful as an instrument to manage various control holds, not as a club or prod. Deputies shall not raise the (baton) above the head to strike a blow.

E. ELECTRONIC CONTROL DEVICES (ECDs/ECWs)

1. An ECD may be used against persons who are actively resisting or exhibiting active aggression or to prevent individuals from harming themselves or others.
2. When practical, the use of an ECD will be preceded by a verbal warning that force will be used if compliance is not obtained.
3. Elevated ECD Application Risk Factors - The following factors, where apparent to involved deputies, required elevated justification of ECD application. Under the following conditions, the risks of foreseeable direct or secondary injuries to the person are foreseeably elevated.

Therefore,

deputies' justification(s) for ECD application are also elevated. These evaluated risk factors can only be given consideration when the factors are reasonably perceived by the deputy(s). In non-lethal force situation, when possible, deputies should avoid using the ECD on:

- a. Persons operating moving vehicle or machinery.

- b. In any environment where the subject's fall could reasonably result in death, such as in an elevated structure or in water.
 - c. Pregnant females.
 - d. Persons with obvious debilitating illnesses or the elderly.
 - e. Persons in wheelchairs.
 - f. Persons with pacemakers or other biomedical devices sensitive to electrical current.
 - g. Persons who are passively resisting.
 - h. Children or persons under 80 pounds.
4. ECDs shall not be used in the following circumstances:
- a. In a punitive manner.
 - b. On a handcuffed or secured prisoner, absent overtly assaultive or fleeing behavior that cannot be reasonably dealt with less intensively.
 - c. On cooperative subjects.
 - d. In any environment where an officer knows that a potentially flammable, volatile, or explosive material is present (including but not limited to OC spray with volatile propellant, methamphetamine lab, gasoline, natural gas or propane.)
5. Carrying and Storage
- a. The device will be carried in an approved holster on the side of the body opposite to the service weapon.
 - b. The device shall be carried fully armed with the safety on, in preparation for immediate use, when authorized.
 - c. Deputies authorized to use the device shall be issued a minimum of one spare cartridge as a backup in case of cartridge failure, the need for redeployment, or in case the first cartridge's wires break during engagement.
 - d. The spare cartridge shall be stored and carried in a manner consistent with training.

6. Maintenance

- a. Each deputy will perform a spark test at least once each week to ensure the ECD is charged and properly functioning. These spark tests will be performed in a safe manner and away from people.
- b. Only agency-approved battery sources shall be used in the ECD.
- c. The ECD shall not be left unattended, unless properly stored.

7. Deployment

- a. Prior to deployment, the deploying deputy shall announce "Taser, Taser, Taser" to avoid sympathetic fire shootings.
- b. In those incidents when a deputy observes obvious signs or symptoms of *excited delirium* in a subject, he/she should arrange for the appropriated backup and medical personnel to be on scene prior to any deployment of the ECD, if practical. In these instances, a single ECD application should be made before the subject has been exhausted, not in the hope of gaining compliance, but rather to create a window of disablement during which deputies can establish physical control over the subject.
- c. Never aim ECD at the eyes or face.
- d. Deputies should refrain from deploying the ECD to sensitive areas of the body.
- e. Upon deployment of the ECD, the deputy shall energize the subject on time and re-evaluate the subject's response, prior to re-energizing. In any case, the ECD shall be energized the least number of times and no longer than necessary to accomplish the law enforcement objective.
- f. The ECD may also be used in certain circumstances in "drive-stun" mode. This involves removing the air cartridge and pressing the unit against an appropriate area of the body consistent with training. It is important to note that when the device is used in this manner, it is:

1. Primarily a pain compliance tool.
2. Subject to the same deployment guidelines and restrictions as those of the ECD in cartridge deployments.

8. Post-Deployment Procedures

- a. Notify a supervisor if one is not on-scene.
- b. If needed, or if one is requested by the subject, request an EMS unit to assess the level of injury sustained by the subject.
- c. Subjects who were exposed to an ECD shall be treated as follows:
 1. If the probes penetrate the skin, only certified ECD users, paramedics or emergency room staff may remove the probes at the earliest opportunity.
 2. If the probes penetrated the skin on the face, head, neck, female breasts, or groin area, only medical staff at a medical facility may remove the probes.
 3. If the subject displays signs of *excited delirium* prior to, or after being energized with an ECD, the subject must immediately receive medical treatment.
 4. Deputies shall provide first aid following removal of the probes by applying an antiseptic and a bandage to the probe sites as needed.

V. DEADLY FORCE

A. Firearms - general:

1. Firearms may be used:
 - a. In defense of the deputy or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or
 - b. To prevent the escape of a fleeing felon whom the deputy has probable cause to believe will pose a significant threat to human life should

escape occur. No other reasonable means of capture must be available to the deputy in this case without endangering the deputy's life or the life of another person.

(1) In evaluating a "significant threat," the deputy must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the deputy or others if apprehension is delayed.

(2) Where feasible, deputies shall identify themselves and give a warning before shooting.

c. To kill seriously injured or dangerous animals when no other disposition is reasonably practical. A supervisor's approval should be sought when possible.

d. In routine firearm training or practice at an approved range.

2. Before using a firearm, deputies shall identify themselves and state their intent to shoot, where feasible.

B. Shotgun:

1. Due to its wide shot dispersion, the shotgun shall only be used when a possibility exists that the deputy will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects, answering calls when the complainant has indicated that a person is armed.

2. The sheriff may approve the use of shotguns on raids and stakeouts when he believes that a threat to human life exists.

3. Shotguns shall be encased/mounted and carried in patrol units when not in preparation for use. When the shotgun is not encased/mounted, it shall be carried with the safety on at all times until there is an immediate need to fire the weapon.

4. Shotguns shall be removed from vehicles before leaving them at any garage or service department.
5. Before beginning a tour of duty or immediately thereafter deputies shall inspect the shotgun assigned to the patrol car.
6. During regular firearms qualification, each deputy shall be required to demonstrate proficiency with the shotgun.
7. The range officer or armorer shall develop a shotgun maintenance schedule. The armorer shall clean and inspect shotguns according to schedule.
8. The general rules for the use of firearms above apply to shotguns.

VI. LIMITATIONS ON FORCE

The following acts associated with the use of force are prohibited.

- A. Firing into crowds.
- B. Firing a warning shot.
- C. Firing at or from a moving vehicle, except where the deputy reasonably believes that:
 1. an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
 2. a vehicle is operated in a manner deliberately intended to strike a deputy or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the deputy's action.
 3. Deputies shall not fire at or in the direction of a vehicle that no longer poses an immediate threat.
- D. Firing into a building or through doors when the person fired at is not clearly visible unless the deputy is being fired upon from such building or through such door.

- E. Firing at a suspect when lesser force could be used and the deputy believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders. *{When in doubt, don't shoot.}*
- F. Application of choke hold or carotid control holds, except when the deputy reasonably believes such holds are the only means of protecting him/herself or another person from an imminent threat of serious physical injury or death.
- G. Use of flashlights as batons. A deputy may use a flashlight only to defend him- or herself or another from imminent serious physical injury or death and then only if departmentally sanctioned methods are not available or are impractical. The use of a flashlight under such circumstances shall be deemed an application of deadly force.
- H. Deputies should be allowed a back up weapon.
- I. The carrying or use of saps, blackjacks, slapjacks.
- J. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
- K. Any use of force not reasonably necessary in the light of the circumstances confronting the deputy.
- L. Any forcible enforcement action when off duty except in circumstances which seriously threaten life, valuable property, or public order.

VII. WEAPONS

- A. Duty weapon: While on duty, a deputy shall carry a department issued or approved weapon, either a .357 revolver, .40cal, .45mm, or a .9mm semiautomatic pistol. The department shall issue ammunition for the weapon.
 - 1. Any deputy who wishes to carry a personally-owned weapon on duty must request permission, in writing, from the sheriff. Weapons shall be inspected and approved by the range instructor/armorer. In

addition, the weapon shall fire department-issued ammunition and the deputy shall qualify with the weapon as well as with department-issued weapons. Deputies shall buy ammunition for their personally-owned off-duty weapons.

2. The sheriff shall maintain a record of all weapons used by deputies either on or off duty. The record lists weapon descriptions, ammunition type issued, date of issue, and information pertaining to qualifications. Deputies shall annually review the records to ensure that they are up to date.

B. Off-duty weapons: Deputies are encouraged, but not required, to carry a handgun when off duty. A deputy who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he or she could have taken law enforcement action if he were armed.

1. (Exception) Off-duty deputies while operating a department vehicle shall be armed with an approved weapon.
2. Deputies who carry off-duty weapons must understand that in some social situations (e.g., sports) the carrying of a firearm is inappropriate.
3. Deputies who have consumed alcoholic beverages shall not carry an off-duty weapon under any circumstances.
4. Deputies shall submit off-duty weapons to the range instructor for inspection and firing before carrying them.
5. Off-duty deputies who carry firearms while in plain clothes shall not wear them in any way that allows the public to see them.

C. Qualification:

Deputy shall not carry or use any firearm, chemical agent, or (baton) unless he or she has received training and demonstrated proficiency in its use.

1. Deputies who fail to pass the qualification shall be relieved of their law enforcement powers and immediately reassigned to non-enforcement duties.
2. Deputies who have taken extensive leave or suffered an illness or injury that could affect the use of firearms shall requalify before returning to enforcement duties.
3. Annual firearms qualification will follow required state standards for daylight and night shooting.
4. Quarterly firearms training will be held and a use of force policy review will be completed annually.

VIII. REPORTING USE OF FORCE

- A. Deputies shall document any application of force except for those arising in training or departmental demonstrations.
- B. If deputies have employed chemical weapons or any higher degree of force, they shall:
 1. immediately notify the on-duty supervisor or the sheriff (if the on-duty supervisor is unavailable) of any use of physical force.
 2. Submit a memorandum to the sheriff within 24 hours describing the incident and any medical aid rendered, and shall substantiate the force used. The memorandum shall be in addition to any other reports. (See Appendix A for form)
- C. Depending on the seriousness of any injury resulting from the application of force, whether to a citizen or deputy, the sheriff shall notify the county manager/mayor and, in case of death, the district attorney and the medical examiner.

IX. DEPARTMENTAL RESPONSE

- A. Assignment:

Pending administrative review, any deputy who has taken

the life of another person shall be removed from line-duty assignment for a minimum of three days. This action protects both the deputy's and community's interests until the situation is resolved. The deputy will complete a psychological review before being returned to line-duty.

B. Review:

1. The sheriff shall review all reported uses of force to determine whether:
 - a. departmental orders were violated;
 - b. relevant departmental policy was clearly understandable and effective to cover the situation; and
 - c. departmental training was adequate.
2. The sheriff may convene a board of inquiry to examine an incident in which force was applied.
 - a. The board of inquiry will ascertain training and policy needs.
3. At least annually, the sheriff shall compile a summary of use-of-force incidents to be made available to the public.

C. Internal investigations:

Internal investigations of serious applications of force (usually of compliance techniques and more severe methods) shall be of two types conducted simultaneously; first, an administrative investigation to determine whether department standards were followed; second, a criminal one to detect lawbreaking. A criminal investigation shall be discontinued whenever the department is satisfied that no misconduct occurred. Rules & Regulations 1-9 details the two types of investigations.

1. Dual internal investigations shall be conducted on all shootings.

D. Psychological services:

Psychological follow-up of post-shooting trauma will normally be directed by the sheriff whenever deemed appropriate. During an internal investigation, the department shall do all within its power to avoid placement of a stigma on the deputy who shoots in performance of duty. Following a shooting resulting in a death, the deputy shall not return to duty until a psychological evaluation has been conducted, and the deputy has received counseling.

[NOTE: The use of trade names such as PR-24 for a side-handled baton or Asp does not imply endorsement of any product. Rather, this general order refers to trade names to convey the degree of specificity required by written policy.]

USE OF FORCE REPORT

Deputy(ies) Name: _____ Date: _____

Subject's Name: _____ Crime: _____

TYPE OF INCIDENT *(reason for deputy contact)*

- | | |
|-------------------------------------------------------|--------------------------------------------|
| <input type="checkbox"/> Crime in Progress | <input type="checkbox"/> Fight |
| <input type="checkbox"/> Misdemeanor | <input type="checkbox"/> Suspicious Person |
| <input type="checkbox"/> Felony | <input type="checkbox"/> Traffic Stop |
| <input type="checkbox"/> Family Domestic | <input type="checkbox"/> DWI |
| <input type="checkbox"/> Other <i>(specify)</i> _____ | |

PURPOSE OF FORCE

- | | |
|--------------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Attempting Arrest | <input type="checkbox"/> Investigation |
| <input type="checkbox"/> Controlling Subject/Situation | <input type="checkbox"/> Other <i>(specify)</i> _____ |
| <input type="checkbox"/> Protecting Self/Another | |
| <input type="checkbox"/> Preventing Self-Harm | |

SUBJECT'S ACTION

- ☐ Passive Resistance (not responsive, evasive to instructions, verbal resistance)
- ☐ Physical Resistance (pulls or runs away)
- ☐ Physical Threat (assaulted or threatened to assault deputy or another)
- ☐ Physical Threat with Weapon
 - ☐ Firearm ☐ Fired at deputy or another
 - ☐ Knife/ Cutting Edge
 - ☐ Striking Device
- ☐ Physical Threat with Motor Vehicle
- ☐ Other *(specify)* _____

DEPUTY'S USE OF FORCE

- ☐ Verbal Persuasion
- ☐ Compliance Hold
- ☐ Leveraged Takedown
- ☐ Chemical Agent
- ☐ Electronic Control Device
 - ☐ Displayed ☐ Demonstrated "Arc"
 - ☐ Discharged ☐ Contact ☐ Probes
- ☐ Baton Strike(s)
 - _____ (number of) Strikes to _____ (body part)
- ☐ Vehicle
- ☐ Firearm
 - ☐ Displayed ☐ Discharged
 - _____ Rounds *(number of rounds discharged by deputy)*
- ☐ Canine
- ☐ Other *(specify)* _____

INCIDENT OUTCOME

- | | |
|---------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Deputy Injured | Subject Injured |
| <input type="checkbox"/> No Medical Care Provided | <input type="checkbox"/> No Medical Care Provided |
| <input type="checkbox"/> EMS Care | <input type="checkbox"/> EMS Care |
| <input type="checkbox"/> Hospital Care | <input type="checkbox"/> Hospital Care |

